

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES BURNETT,
Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,
Defendant.

Case No. 24-cv-00236-VKD

**ORDER GRANTING AS UNOPPOSED
MOTION FOR SUBSTITUTION OF
PLAINTIFF**

Re: Dkt. No. 18

In November 2023, plaintiff James Burnett filed this action against his insurer, Allstate Insurance Company (“Allstate”), for breach of contract, tortious breach of the implied covenant of good faith and fair dealing, and financial abuse of an elder. Dkt. No. 1-1. On January 12, 2024, Allstate removed the matter here, asserting diversity jurisdiction. Dkt. No. 1. Mr. Burnett died several weeks later, on January 29, 2024. *See* Dkt. Nos. 18-2, 18-3. Now pending before the Court is a motion to substitute Crystal Yvonne Burnett, identified as Mr. Burnett’s daughter and beneficiary, as Mr. Burnett’s successor-in-interest.¹ Dkt. No. 18. As Allstate does not oppose the motion, the motion is granted.²

Rule of Civil Procedure 25 governs the substitution of parties, and provides that, “[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party.” Fed. R. Civ. P. 25(a)(1). “The substituted party steps into the same position as original party.”

¹ In the future, all noticed motions must be filed in one document, and not as separate documents with separately numbered pages. *See* Civil L.R. 7-2(b).

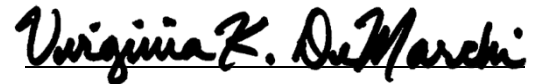
² The matter is deemed suitable for determination without oral argument, and the noticed June 4, 2024 hearing is vacated. Civil L.R. 7-1(b).

1 *Hilao v. Estate of Marcos*, 103 F.3d 762, 766 (9th Cir. 1996). A motion for substitution may be
2 made “by the decedent’s successor or representative,” and if “not made within 90 days after
3 service of a statement noting the death, the action by or against the decedent must be dismissed.”
4 Fed. R. Civ. P. 25(a)(1). In deciding a motion to substitute under Rule 25(a)(1), courts consider
5 the motion’s timeliness, whether any pleaded claims are extinguished, and whether the person
6 being substituted is a proper party. *See Schneider v. Evanston Ins. Co.*, No. 20-cv-03484-JSC,
7 2021 WL 229234, at *1 (N.D. Cal. Jan. 22, 2021). Claims under California law survive a
8 plaintiff’s death except as otherwise provided by statute. Cal. C.C.P. § 377.20(a).

9 Allstate does not oppose the present motion for substitution, and the Court has been given
10 no reason to deny it. Accordingly, the motion to substitute Ms. Crystal Burnett as Mr. Burnett’s
11 successor-in-interest is granted as unopposed.

12 **IT IS SO ORDERED.**

13 Dated: May 6, 2024

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16 Virginia K. DeMarchi
17 United States Magistrate Judge
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